

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

RICHARD M. DAVIS

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
 Kimmel & Silverman, P.C.
 30 E. Butler Pike
 Ambler, PA 19002
 (215) 540-8888

DEFENDANTS

MERCANTILE ADJUSTMENT BUREAU, LLC

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) _____ 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate JudgmentCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C SECTION 1692**VI. CAUSE OF ACTION**Brief description of cause:
Fair Debt Collection Practices Act**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation: _____



DATE

SIGNATURE OF ATTORNEY OF RECORD

04/04/2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

RICHARD DAVIS

: CIVIL ACTION

v.

: NO.

MERCANTILE ADJUSTMENT BUREAU
LLC,

:

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()

(f) Standard Management – Cases that do not fall into any one of the other tracks. ()

04/04/2013

Date

Craig Thor Kimmel

Attorney-at-law

Plaintiff, Richard M. Davis

Attorney for

215-540-8888

Telephone

877-788-2864

FAX Number

kimmel@creditlaw.com

E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 5517B Walnut Street, Philadelphia, PA 19139

Address of Defendant: 6390 Main Street, Williamsville, NY 14221

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities? Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases
(Please specify) 15 U.S.C. § 1692

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
(Please specify) _____
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

I, Craig Thor Kimmel,

counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 04/04/2013

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 04/04/2013

Attorney-at-Law

57100

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD M. DAVIS,)
Plaintiff,)
v.) Case No.:
MERCANTILE ADJUSTMENT) COMPLAINT AND DEMAND FOR
BUREAU, LLC,) JURY TRIAL
Defendant.) (Unlawful Debt Collection Practices)

COMPLAINT

RICHARD M. DAVIS (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against MERCANTILE ADJUSTMENT BUREAU, LLC (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy” and 28 U.S.C. §1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

1 3. Defendant conducts business in the Commonwealth of Pennsylvania;
2 therefore, personal jurisdiction is established.
3

4 4. Venue is proper pursuant to 28 U.S.C. §1391(b)(2).
5

PARTIES

6 5. Plaintiff is a natural person who resides in Philadelphia, Pennsylvania
7 19139.
8

9 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C.
10 §1692a(3), or, in the alternative, Plaintiff is a person granted a cause of action
11 under the FDCPA. See 15 U.S.C. § 1692k(a); Wenrich v. Cole, 2000 U.S. Dist.
12 LEXIS 18687 (E.D. Pa. Dec. 22, 2000); and Bodur v. Palisades Collection, LLC,
13 2011 WL 6306725, at 8-9 (S.D.N.Y. 2011) (FDCPA protects non-debtors subject
14 to errant collection efforts and “[t]o hold otherwise would run contrary to the
15 purpose of the FDCPA to ‘also protect [] people who do not owe money at all’
16 since collection efforts are often aimed at the wrong person either because of
17 mistaken identity or mistaken facts”).
18

20 7. Defendant is a national debt collection company with its corporate
21 headquarters located at 6390 Main Street, Williamsville, New York 14221.
22

23 8. Defendant is a “debt collector” as that term is defined by 15 U.S.C.
24 §1692a(6).
25

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff.

11. Upon information and belief, the alleged debt, a Household credit card account, arose out of transactions that were primarily for personal, family or household purposes.

12. Plaintiff never incurred any debt in connection with a business or commercial activities, and therefore, the debt, if truly an obligation owed by her could have only arisen from a financial obligation for primarily personal, family or household purposes.

13. Beginning in March 2013, Defendant contacted Plaintiff in an attempt to collect an alleged consumer debt.

14. In addition to sending Plaintiff written correspondence about the alleged debt, beginning in March 2013, Defendant repeatedly contacted Plaintiff on his home telephone in an attempt to collect an alleged debt.

15. On one occasion, Plaintiff answered the phone, and disputed the alleged debt, explaining to Defendant that he had no intention of paying as it was

1 past the statute of limitations and he did not have a legal obligation to pay.

2 16. However, Defendant's collector, an individual who identified himself
3 as "Mr. Stiles," falsely claimed that Plaintiff was still "liable for this debt" and that
4 if he did not pay, that Defendant would "get a judgment."

5 17. In response, Plaintiff instructed Defendant to stop calling or he would
6 seek the advice of an attorney.

7 18. "Mr. Stiles" terminated the call.

8 19. Defendant did not update its records to avoid the further harassment
9 of Plaintiff, nor did Plaintiff remove Plaintiff's home telephone number from its
10 call logs.

11 20. Rather, Defendant continued to call Plaintiff in its attempts to collect
12 this debt.

13 21. Most recently, Defendant contacted Plaintiff on March 18, 2013,
14 seeking and demanding payment of the alleged debt.

15 22. At the time Defendant threatened to "get a judgment" if Plaintiff did
16 not make payment on the debt, not only did it not have the intent to take the action
17 that it threatened, but legally did not have authority to take the action it threatened,
18 as this debt was past the statute of limitations, as no payment had been made on
19 the alleged debt in more than four (4) years.

20 23. Defendant's conduct was engaged in with the intent to deceive,

harass, coerce and intimidate Plaintiff into paying the alleged debt.

**DEFENDANT VIOLATED
THE FAIR DEBT COLLECTION PRACTICES ACT**

COUNT I

24. Defendant's conduct, as detailed in the preceding paragraphs, violated
15 U.S.C. §1692d.

³ A debt collector violates §1692d of the FDCPA by engaging in

conduct of the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

b. Here, Defendant violated §1692d of the FDCPA by continuing to call Plaintiff about a debt he disputed and refused to pay, with the intent to annoy, abuse, and harass him.

COUNT II

25. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §§1692e and 1692e(5) of the FDCPA.

- a. A debt collector violates §1692e of the FDCPA by using false, deceptive or misleading representations or means in connection with the collection of any debt.

b. A debt collector violates §1692e(5) of the FDCPA by threatening to take any action that cannot legally be taken or that is not intended to be taken.

c. Here, Defendant violated §§1692e and 1692e(5) of the FDCPA by threatening to get a judgment against Plaintiff for a debt past the statute of limitations even though Defendant did not intend and legally could not take such actions at the time it made those threats.

COUNT III

26. Defendant's conduct, as detailed in the preceding paragraphs, violated
15 U.S.C. §1692f.

a. A debt collector violates §1692f of the FDCPA by using unfair or unconscionable means to collect or attempt to collect any debt.

b. Here, Defendant violated §1692f of the FDCPA engaging in other unfair and unconscionable debt collection practices, including telling Plaintiff that he was still liable for the debt, after Plaintiff informed Defendant that the debt was past the statute of limitations, hanging up the phone on Plaintiff, and continuing to call him after having been told he was going to seek advice of counsel and that he disputed the debt.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, RICHARD M. DAVIS, respectfully prays for a judgment as follows:

- 1 a. All actual damages suffered pursuant to 15 U.S.C. §1692k(a)(1);
- 2 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
- 3 pursuant to 15 U.S.C. §1692k(a)(2)(A);
- 4 c. All reasonable attorneys' fees, witness fees, court costs and other
- 5 litigation costs incurred by Plaintiff pursuant to 15 U.S.C. §
- 6 1693k(a)(3); and
- 7 d. Any other relief deemed appropriate by this Honorable Court.
- 8

DEMAND FOR JURY TRIAL

10 PLEASE TAKE NOTICE that Plaintiff, RICHARD M. DAVIS, demands a
11
12 jury trial in this case.

13 RESPECTFULLY SUBMITTED,

14 Date: 04/04/2013
15 By: _____
16 CRAIG THOR KIMMEL
17 Attorney ID No. 57100
18 Kimmel & Silverman, P.C.
19 30 E. Butler Pike
20 Ambler, PA 19002
21 Phone: (215) 540-8888
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25